

July 17, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

REPLY COMMENTS OF SUE PRESENT

WT Docket No. 17 - 79

re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

WC Docket No. 17 - 84

re: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

Madam Secretary,

I applaud my local government for having already gone to great lengths to set the record straight with the FCC following the November 15, 2016 Petition for Declaratory Ruling by Mobilitie, LLC.¹

Montgomery County, Maryland joined with many of its fellow members and affiliates to file the Smart Communities Siting Coalition Comments in WT Docket No. 16 - 421.² Montgomery County individually filed Supplemental Comments, too.³ Reply Comments were also filed by both the Smart Communities Siting Coalition and by Montgomery County, Maryland.⁴ Those Comments and Reply Comments exposed Mobilitie -- its wireless industry brethren, too -- for the disingenuous statements and flawed arguments, which were presented in the Petition and that surround the industry's pleas for FCC intervention.

¹ *Petition for Declaratory Ruling by Mobilitie, LLC, Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way*, (Nov. 15, 2016). ("Petition").

² Comments of Smart Communities Siting Coalition, WT Docket No. 16-421, (March 8, 2017),

³ Supplemental Comments of Montgomery County, Maryland, WT Docket No. 16-421, (March 8, 2017),
https://ecfsapi.fcc.gov/file/1030998488645/COMMENTS_SMART%20COMMUNITIES%20SITING%20COALITION.pdf
<https://ecfsapi.fcc.gov/file/1030906624566/COMMENTS-Montgomery%20County.pdf>

⁴ Reply Comments of Smart Communities, WT Docket No. 16 - 421,(Apr. 7, 2017),

<https://ecfsapi.fcc.gov/file/10408053091882/REPLY%20COMMENTS-Smart%20Communities%20Siting%20Coalition.pdf>; and

Reply Comments of Montgomery County, Maryland, Maryland, WT Docket No. 16 - 421, (Apr. 7, 2017),
<https://ecfsapi.fcc.gov/file/10408136073686/MontgomeryCounty%20Reply.pdf>

I filed Comments in WT Docket No. 16-421 myself, which included, for example, the following passage:

The neutral wireless hosts that are competing for wireless broadband supremacy in Montgomery County's public rights-of-way (PROWs) are Crown Castle and Mobilitie. Despite findings of the NextG/Crown Castle safety violations that led to the aforementioned Malibu Canyon Fire and the resulting catastrophic damages and injuries, recently it has been [its neutral host competitor] Mobilitie that has drawn media attention and public indignation for violations of the law and other highly questionable activities. Mobilitie has been masquerading as a state-regulated utility in at least 18 states, apparently to access PROWs without obtaining government permits and to elude public notice/complaints. Despite its charades, Mobilitie was caught and cited for constructing its facilities in PROWs in my own state of Maryland and the neighboring state of Virginia without having the (safety and other) state and/or LGU permits. As the FCC has long been aware, "[n]ot only are unauthorized attachments a hidden cost [to state-regulated utilities and the LGUs] in the literal sense in terms of lost revenue, but they as well as non-compliant attachments create additional load on the poles, which can (and has) caused poles to snap. Conversely for attachers, they save money both in terms of rent and often avoided make ready."

"Unauthorized and non-compliant attachments threaten the safety of linemen as well as the general public. They also undermine critical infrastructure. Although utilities do not generally track statistics on pole attachment related accidents, they did report numerous incidents that highlight the impact on critical infrastructure and public safety." Mobilitie has also been exploiting regulations and its rights to occupy PROWs by installing "micro-macro" facilities that at 70 to 120 feet in height rival the heights of many standard macro facilities. (citations omitted)⁵

Montgomery County's Supplemental Comments detail the "10 month odyssey and counting," where Mobilitie failed to put forth reasonable effort toward utilizing the County's Telecommunication's Siting Process. This County filing reveals the saga between the County and Mobilitie that began approximately one year ago, in July 2016. It explains how, month by month, Mobilitie repeatedly submitted in excess of 100 applications to the County's preliminary review body, the Tower Committee (and in some cases Mobilitie also prematurely applied for County building permits). These applications were incomplete and/or inaccurate, even upon their multiple re-submissions. The Mobilitie applications drew inordinate time and County resources at taxpayers' expense. But rather than rejecting the applications and requiring re-filings and new filing fees, the County demonstrates that it went to great lengths to assist Mobilitie in moving forward toward achieving complete and sufficient applications. Eventually, with little to show for the investment of County resources, staff set a final deadline for Mobilitie to ready one "pilot" application. This approach apparently worked because Mobilitie met that deadline in February 2017.⁶

⁵ Comments of Sue Present, WT Docket No. 16-421, at 2 - 3 (Jan. 17, 2016), https://ecfsapi.fcc.gov/file/101160867025032/FCC_comments_WT16421_sPresent.pdf

PROWs is the acronym for public rights-of-way; LGUs is the acronym for local government units.

⁶ See *supra* 3.

Mobilitie's pilot application was placed on the County's Tower Committee April 2017 meeting agenda for review and recommendation. In presenting this application at the Tower Committee meeting, Montgomery County Tower Coordinator, consultant James Crane, expressed his uneasiness with the application because the applicant had not acquired authorization to attach the proposed antennas/equipment to the utility-owned lamp pole. Prior to the meeting, I had also apprised the Tower Committee of several other deficiencies that I had noticed with this application.⁷ Committee members questioned Mobilitie representatives that had appeared at the meeting. But the Mobilitie representatives stated that they were not qualified to respond to the Tower Committee members' questions, and that the qualified representatives were not in attendance. Presumably, pressed by "shot clock" time limitations imposed by FCC rules, the Tower Committee "recommended" (i.e., approved) the application with the expectation that the deficiencies would be corrected prior to permits being issued. But Mobilitie was forewarned to have a qualified representative in attendance at future Tower Committee meetings when Mobilitie applications would be on the agenda.

Eighteen Mobilitie applications were considered at the Tower Committee's May 2017 meeting, and a Mobilitie representative was in attendance to respond to questions. Prior to this meeting, I notified the Tower Committee that I had reviewed these applications, and I had found that many of the same deficiencies that I had found with the application that the Committee reviewed in April, including no documentation of rights granted from the owners of the existing structures to attach the proposed antennas and equipment. During the meeting, Committee Chair Marjorie Williams questioned the Mobilitie representative about its acquisition of rights to attach to the various structures in question. The Mobilitie representative attested that preliminary rights had already been acquired. But Chair Williams indicated that what Mobilitie said was false. On the morning of the Committee Meeting, she had checked with the owners of all of the structures in question (utility company representatives) and she had confirmed that no discussions had transpired between the pole owners and Mobilitie concerning the structures in question. These reviews should have resulted in the Tower Committee's vote to "not recommend, but that was not the case."⁸ Mobilitie was provided the magnanimous courtesy of being able to table all of its applications on the agenda to repair them.

At the June 2017 Tower Committee meeting, four prior Mobilitie applications were brought back to the Committee for review. For these applications, Mobilitie had documented having engaged in the required preliminary contact with the utility-owners of the intended structures where Mobilitie proposed attaching its facilities. The Tower Committee recommended two of these applications, even though they were still, according to my findings, deficient in several respects. But two of the applications were again tabled because of remaining application deficiencies.

Of the three total Mobilitie applications that were recommended by the Tower Committee, I found that all of them proposed misleading and deceptive emergency signage, which would have identified the emergency contact as Interstate Transport and Broadband, LLC, and the e-mail contact as

⁷ Parents Coalition of Montgomery County Blog, *MoCo Tower Committee Withholds Report Prior to Wed. Meeting & Vote on Cell Tower Application. End Vote on Free Do-Overs on Cell-Tower Applications*, (Apr. 4, 2017), <http://parentscoalitionmc.blogspot.com/search?q=+mobilitie>

⁸ Reply Comments of Montgomery County Maryland, WC Docket No. 11-59 at 18 – 19 (Sept. 30, 2011). "Problems that typically result in a co-location application being deemed incomplete include: ... Applications for which the property owner has not agreed to the lease or even approved the attachment." <https://ecfsapi.fcc.gov/file/7021712395.pdf>

NOC@ITBUtility.com. This signage would have given the impression that the operator was not Mobilitie, LLC or Technologies MD Network, LLC (the Mobilitie subsidiary), and perhaps that it was instead a state-regulated utility. I also found all three of these applications to contain incomplete, contradictory, and deceptive information.⁹

One week following the June Tower Committee Meeting, after wasting an extraordinary amount of County staff and consultants' time and taxpayers' money, Mobilitie withdrew its entire lot of applications (more than 100).

Mobilitie's change of heart regarding pursuing small cell deployments in Montgomery County, Maryland's public rights-of-way has not seemed to have changed its nationwide stance. Its Comments in the subject dockets do not veer from the Petition.¹⁰ So, perhaps the recent events make this stroll down Mobilitie Lane all the more apropos, as this Reply Comment period draws to a close.

The industry has asserted many questionable statements regarding so called "streamlining deployment of small cell infrastructure(s)," which I hope that the Smart Communities Siting Coalition, Montgomery County, and I, contributed to debunking.¹¹ I am dismayed that Chairman Pai, in his Statement, has fallen prey to the industry's frequently repeated false claim that small cells can be the size of a pizza box.¹² Of course, this is erroneous.¹³

Upon reflection, the arduous and somewhat threatening experiences of Mobilitie's applications in Montgomery County was not an entire waste. It certainly fueled community discord. But it also provided a wake-up call for the County government and its residents and other stakeholders to thoughtfully evaluate and amend those aspects of the County Code that address small cell facilities. It furthermore prompted our representatives at various levels of government to coalesce to clarify County concerns, and for all stakeholders to seek reasonable solutions to our community issues. This exercise continues to require time, patience, and care. It will require the FCC's respect for local controls. It will require NOT adopting the additional rules that would interfere with our efforts. Thank you for your consideration.

Sincerely

Sue Present
1000 La Grande Rd.
Silver Spring, MD 20903
240.331.9155
suepresentATcomcast.net

⁹ Message to Tower Commi 

¹⁰ Mobilitie Comments, (June 15, 2017), https://ecfsapi.fcc.gov/file/10615299503672/Mobilitie_Comments-Dockets_17-79_and_17-84.pdf

¹¹ See *supra* 2 *passim*, *supra* 3 *passim*, *supra* 4 *passim*, and *supra* 5 *passim*.

¹² Statement of Chairman Ajit Pai, WT Docket 17-79, https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-38A2.pdf

¹³ FCC rules dictate that small cells include all equipment, per the Spectrum Act. https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-153A1.pdf; See also *supra* 2 *passim*.